



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

**MEMORANDUM**

SUBJECT: Discussion of "Occurrence" and "Property Damage"

FROM: Sammy K. Ng, Chief /s/  
Regulatory Analysis Branch

TO: Wayne S. Naylor, Chief  
Underground Storage Tank Section, Region III

I am writing in response to your request for clarification of the terms "occurrence" and "property damage" particularly as related to Virginia's interest in these terms. Both John Heffelfinger and I have discussed the issues with Joanne Cassidy, but I wanted to provide you with something in writing for your future discussions with the State.

Occurrence.

Virginia is interested in what situations UST releases would be considered "one" occurrence versus those cases in which releases might be considered two or more occurrences. Insurance industry practice is to consider all contamination discovered during a single site investigation to be "one" occurrence, regardless of the number of tanks/piping that may be leaking. For example, if two tanks are discovered to be leaking during the same site investigation, it doesn't matter whether they are part of the same UST system, i.e., manifolded, or two separate tanks -- the insurance industry considers it to be one occurrence, with one deductible payable by the UST owner, and one cleanup conducted.

One State has chosen to define "occurrence" in their State regulations that directly reflects the insurance industry's approach, as follows:

"Occurrence" means an incident which results in a release from an underground storage tank system, and any other releases which may be occurring simultaneously at the facility at which the UST system is located.

On the other hand, leaks discovered at different times from the same UST system, as a result of unrelated investigations would be considered "two" occurrences.

Our understanding is that Virginia wants to define leaks discovered at the same time from two separate tanks in the same excavation to be two occurrences. Under their State fund, this would require two deductibles from the tank owner, but also leave the State responsible for paying per occurrence coverage up to the fund limits for each occurrence (an outcome the State

may not desire). Although Virginia is free to make this interpretation, we believe it makes more sense to follow insurance industry practice in this case. For example, "wrap-around" insurance coverage for the deductible would likely be more available if the State considered all contamination found during a single site investigation to be one occurrence. otherwise, an insurer (or guarantor or tank owner who is self-insuring) would face great uncertainty in providing "per occurrence" coverage for the deductible.

### Property Damage.

Virginia has apparently raised a question regarding the definition of "property damage." The Federal rules define the term as follows:

"Property damage" shall have the meaning given this term by applicable state law, This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liabilities insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

The State's concern is over the last sentence, which says that corrective action costs can't be excluded from property damage coverage. The confusion over this sentence lies in the fact that up until our regulations were issued, insurers did not provide any coverage for "on-site" corrective action. Coverage for bodily injury and property damage were considered third party claims. Coverage for "off-site" corrective action was provided under the property damage portion of the policy. when we wrote the FR regulations, we wanted to make sure that "on-site" corrective actions would also be covered. We assumed that such coverage would also be provided under the property damage portion of the policy and, thus, included the last sentence in the above definition.

We also wrote our regulations around the artificial distinctions of "corrective action" and "third party liability" created by Congress in the statute. The insurance industry has, for the most part, responded to these categories and now writes policies covering "corrective action" (both on-site and off-site) and "bodily injury/property damage liability." while we require corrective action coverage be obtained, we recognize that it still may occur under various portions of policy coverage. We recommend that Virginia follow the more recent industry trend of covering both on-site and off-site corrective action under the definition of corrective action.

cc: Ron Brand  
Mike Williams